4-258
April 29/874
Submitted

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 252.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

FRANCIS M. YOUNG, THOMAS O. TREANOR, PASCHAL P. PECK, AND JOHN RAMAGE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

R

FILED DECEMBER 8, 1874.

April 28 1879
Reversed
No opinion

SUPREME COURT OF THE UNITED STATES.

No. 252.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

FRANCIS M. YOUNG, THOMAS O. TREANOR, PASCHAL P. PECK, AND JOHN RAMAGE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

INDEX.

	Original.	Print.
Citation	1	1
Assignment of errors	3	1
Writ of error	5	2
Declaration	7	2
Summons	12	4
Demurrer of Young and Treanor	16	5
Demurrer of Peck and Ramage	22	7
Amended demurrer of Young and Treanor	27	8
Amended demurrer of Peck and Ramage	32	10
Judgment	38	12
Clerk's certificate	40	12

United States of America, ss, to Francis M. Young, Thomas O. Treanor, Paschal P. Peck, and John Ramage, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Middle Tennessee, wherein the United States are plaintiffs, and you are defendants in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the United States, this 28th day of November, in the year of our Lord one thousand eight hundred and seventy-four.

CONNALLY F. TRIGG,
United States District Judge presiding in the Circuit Court of the United States for the District of Middle Tennessee.

2 THE UNITED STATES
vs.
SAMUEL H. MANNING, THOMAS A. MCCALL, John Porterfield, Samuel B. Davidson, William Jordan.

I hereby acknowledge service of the within citation Nov. 28, 1874.
HORACE H. HARRISON,
Atty. for Defendants.

3 Supreme Court of the United States.

THE UNITED STATES
vs.
FRANCIS M. YOUNG, THOMAS O. TREANOR, Paschal P. Peck, & John Ramage.

Of December term, in the year of our Lord one thousand eight hundred and seventy-two.

Afterwards, to wit, on the first Monday of December, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, come the said United States, by George Andrews, their attorney, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit:

That the *the* said circuit court of the United States for the district of Middle Tennessee erred in sustaining the demurrers of defendants to the second count of the plaintiffs' declaration in this cause, and in refusing to enter judgment in favor of the plaintiffs upon the said second count, and in entering judgment upon said count in favor of the defendants.

And the said United States pray that the judgment aforesaid, for the errors aforesaid, may be reversed, annulled, and altogether held
4 for naught, and that they may be restored to all things which they have lost by reason of the said judgment.

GEO. ANDREWS,
Attorney for Plaintiffs in Error.

5 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of Middle Tennessee, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between the United States, plaintiffs, and Francis M. Young, Thomas O. Treanor, Paschal P. Peck, and John Ramage, defendants, a manifest error hath happened, to the great damage of the United States, as by their complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the
6 Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday in October next, in the said Supreme Court to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 28 day of November, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] E. R. CAMPBELL,
Clerk of the Circuit Court of the United States for the District of Middle Tennessee.

7 Middle district of Tennessee.

At a circuit court of the United States, begun and held in the capitol of said State, in Nashville, in said district, on the third Monday, being the 16th day, of October, A. D. 1871.

Neither of the judges of said court appearing, thereupon the marshal adjourned the court until to morrow morning at ten o'clock.

TUESDAY MORNING, *October* 17, 1871.

Court met pursuant to adjournment; present, the honl. Connally F. Trigg, judge.

The following proceedings were had, to wit:

On May 24, 1870, a declaration was filed in said court, in the words and figures following, to wit:

Declaration.

THE UNITED STATES
vs.
FRANCIS MARIAN YOUNG, THOMAS ORMSBY Treanor, Paschal Paoli Peck, and John Ramage.

Circuit court of the United States for the middle district of Tennessee, October term, 1870.

The United States of America, by attorney, complain of Fran-
8 cis Marian Young, Thomas Ormsby Treanor, Paschal Paoli Peck,

and John Ramage, residents of said district, who are in court by summons of a plea that they render unto plaintiffs the sum of $10,000, which to them they owe and from them unjustly detain.

For that on Febr'y 4, 1869, defendants executed their certain writing obligatory here to the court shown, whereby they bound themselves jointly and severally to pay to plaintiffs the sum of $5,000, unless said Young and Treanor (who intended, on and after Feb'y 4, 1869, to be engaged in the business of distilling within the 5th collection-district of the State of Tennessee, to wit, at a point on Central Pike, 14 miles from Nashville, in Wilson County) should comply with all the conditions of said obligation, one of which was that they should, in all respects, faithfully comply with all the provisions of law in relation to the duties and business of distillers; said bond was duly accepted by plaintiffs, and thereunder said Young and Treanor engaged in said business at said place on Feb. 4, 1869, and continued so engaged until after May 1st, 1869, and during said time Ben. R. Webb and J. W. Howell, United
9 States internal-revenue storekeepers were duly in charge of the distillery-warehouse of said distillers at said place in the month of April, 1869, the former during the day-time for 30 days, and the latter during the night-time for 26 days, each storekeeper at a salary duly fixed at $4 per day, (said distillery being operated day and night during said month,) and as account of such services there were paid by plaintiffs to said storekeepers respectively on May 25, 1869, & May 8, 1869, the respective sums of $120 & $104, which were thereupon immediately demanded of said distillers by plaintiffs in re-imbursement of said salaries so paid, and it was the duty of said distillers to have promptly complied with said demands, but they wholly failed to comply with either, and have never re-imbursed to plaintiffs any part of either of said sums, whereby the condition of said obligation being broken plaintiffs became entitled to receive the amount of the penalty thereof from defendants on demand. Yet, though often demanded, no part thereof has ever been paid.

And further, on May 1, 1869, defendants executed their further certain writing obligatory, here to the court shown, whereby they bound themselves jointly and severally to pay to plaintiffs the sum of $5,000,
10 unless said Young & Treanor (who intended on and after May 1, 1869, to be engaged in the business of distilling within the fifth collection district of the State of Tennessee, in the 25th civil district of Wilson County) should comply with all the conditions of said obligation, one of which was that they should in all respects faithfully comply with all the provisions of law in relation to the duties and business of distillers. Said bond was duly accepted by plaintiffs, and thereunder said Young and Treanor engaged in said business at said place on May 1, 1869, and continued so engaged until after August 31, 1869, during which time John W. Howell, a United States internal-revenue storekeeper, was duly in charge of the distillery-warehouse of said distillers at said place for 31 days of May, 30 days of June, 12 days of July, and 31 days of August, at a salary duly fixed at $4 per day, on account of which services plaintiffs paid accordingly to said storekeeper $124 (salary for May) on June 14, 1869; $120 (salary for June) on July 9, 1869; $48 (salary for July) on August 7, 1869; and $124 (salary for August) on Sept. 1869—each sums on being so paid being promptly demanded by plaint-
11 iffs of said distillers in re-imbursement to themselves of said salary so paid, but no part of any of said sums was paid to plaintiffs by said distillers, and they have never re-imbursed to plaintiffs any part of any of said sums, whereby the condition of said obliga-

tion being broken plaintiffs became entitled to receive from defendants the amount of the penalty thereof on demand; yet, though often demanded, no part of the same has ever been paid. By reason of the premises plaintiffs have sustained damage to the amount of $1,000. Hence suit.

R. McP. SMITH,
U. S. Atty.

On the 24 day of May, 1870, a summons was issued, which, together with the endorsements thereon, is in the words and figures following, to wit:

12 The President of the United States of America to the marshal of the middle district of Tennessee, greeting:

You are hereby commanded to summon Francis Marian Young, Thomas Ormsby Treanor, Paschal Paoli Peck, and John Ramage, residents of said district, if to be found in your district, to be and appear before the judges of the circuit court of the United States, in the sixth circuit, for the middle district of Tennessee, at the Federal court-room at Nashville, in said State, on the third Monday in October next, then and there to answer the United States of America of a plea that they render unto the plaintiff $10,000, which they owe to and from them unjustly detain, to their damage $1,000.

Herein fail not; and have then and there this writ.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, this the third Monday in April, in the year of our Lord eighteen hundred and seventy, and of the Independence of the United States the 94th.

[SEAL.]

E. R. CAMPBELL, *Clerk*,
By J. W. CAMPBELL, *D. C.*

13 (Indorsed:) No. 1647. The United States of America versus Francis Marian Young, Thomas Ormsby Treanor, Paschal Paoli Peck, & John Ramage. Summons.

This summons was issued on the 24 day of May, 1870.

E. R. CAMPBELL, *Clerk.*

U. S. Dist. Atty.

Came to hand Oct. 3, 1870, and executed on F. M. Young, P. P. Peck, and John Ramage, by making known to them the contents of this writ and leaving with them copies of the declaration. T. O. Treanor is not to be found in my district.

October 5, 1870.

T. J. HARRISON, *Marshal.*

On the 8th day of Dec'r, 1872, an alias summons was issued, which, together with the endorsements thereon, is in the words and figures following, to wit:

14 The President of the United States of America to the marshal of the middle district of Tennessee, greeting:

You are hereby again commanded to summon Francis Marian Young, Thomas Ormsby Treanor, Paschal Paoli Peck, and John Ramage, citizens of the State of Tennessee, if to be found in your district, to be and appear before the judges of the circuit court of the United States, in the sixth circuit, for the middle district of Tennessee, at the Federal court-

room at Nashville, in said State, on the third Monday in April next, then and there to answer the United States of a plea that they render unto them the sum of ten thousand dollars which they owe to and from them unjustly detain, to their damage $1,000.

Herein fail not, and have then and there this writ.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, this the third Monday in October, in the year of our Lord eighteen hundred and seventy, and of the Independence of the United States the 95th.

[SEAL.]

E. R. CAMPBELL, *Clerk*,
By J. W. CAMPBELL, *D. C.*

15 (Indorsed:) No. 1647. The United States versus F. M. Young et als. Alias summons.

This summons was issued on the 8 day of Dec'r, 1870.

E. R. CAMPBELL, *Clerk.*

Summon Thomas O. Treanor only.

E. R. CAMPBELL, *Clerk.*

U. S. Dist. Atty.

Came to hand same day issued, and executed by making known contents of this writ to T. O. Treanor this 29 Dec'r, 1870.

T. J. HARRISON, *Marshal*,
By M. T. SANDERS, *Deputy.*

On the 19 day of April, 1871, a demurrer was filed by the defendants Young & Treanor, which is as follows:

16 In the circuit court of the United States for the middle district of Tennessee, April term, 1871.

THE UNITED STATES
v.
FRANCIS MARION YOUNG ET ALS. } Demurrer.

Francis Marion Young and Thomas Ormsby Treanor, by Horace H. Harrison, their attorney, come and crave oyer of the said writing obligatory and the conditions thereof, which is read to them in the words and figures following, to wit:

United States internal revenue.—Distiller's bond.

(This bond must be executed by every distiller before commencing or continuing business under this act, and on the first day of May in each succeeding year. Act July 20, 1868, sec. 7.)

Know all men by these presents that we, Francis Marion Young and Thomas Ormsby Treanor, as principals, and John Ramage and
17 Paschal Paoli Peck, all of Nashville, Tennessee, are held and firmly bound unto the United States of America in the full and just sum of five thousand dollars, money of the United States, to which , well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 4th day of February, A. D. 1869.

The condition of the foregoing obligation is such that whereas the said Francis Marion Young and Thomas Ormsby Treanor now, or intend on or after the 4th day of February, 1869, to be engaged in the business of a distiller within the fifth collection district of the State of Tennessee, to wit, at a point on Central Pike, situate 14 miles from Nashville, county of Wilson and State aforesaid:

Now, therefore, if the said Francis Marion Young and Thomas Ormsby Treanor shall, in all respects, faithfully comply with all the pro-
18 visions of law in relation to the duties and business of distillers, and shall pay all penalties incurred or fines imposed for a violation of any of the said provisions, and shall not suffer the lot or tract of land on which the distillery stands, or any part thereof, or any of the distillery apparatus, to be encumbered by mortgage, judgment, or other lien during the time in which he shall carry on said business, then this obligation shall be void; otherwise it shall be in full force.

(Signed) FRANCIS MARION YOUNG. [SEAL.]
THOMAS ORMSBY TREANOR. [SEAL.]
JOHN RAMAGE. [SEAL.]
PASCHAL P. PECK. [SEAL.]

Signed, sealed, and delivered in presence of—
JNO. S. ANDERSON.
M. W. DORCHFORD.
JOS. H. NORVELL.

[U. S. int.-rev. stamp. Feb. 4, 1869. F. M. Young.]

Whereupon the said defendants, Young & Treanor, the principals in said writing obligatory, say that the said plaintiffs their said action against these defendants ought not to have and maintain, because they say that *the said plaintiffs their said action against these defend-*
19 *ants ought not to have and maintain, because they say that* the said declaration of the said pltffs., and the matters and things therein, as the same are stated and set forth, are not sufficient in law, and these defendants demur thereto, and for cause of demurrer set down the following:

1st. The said defendants, by the execution and delivery of said writing obligatory, and by the conditions thereof, did not in law become liable and bound to pay to the said persons named in the plaintiffs' said declaration as United States internal-revenue store-keepers the said several sums of money mentioned in said declaration, or any other sum, or to pay and refund to plaintiffs said several sums of money in said declaration demanded by the said plaintiffs in their said declaration alleged to have been paid to said store-keepers, or to pay or re-
20 fund to plaintiffs that or any other sum paid and advanced by the said plaintiffs to said persons named in said declaration as United States internal-revenue store-keepers.

2d. That the alleged breach in the condition of said writing obligatory was in law no breach of the condition, or any of the conditions, of said bond or writing obligatory, and neither the act of Congress nor any act of Congress providing for the appointment or employment of store-keepers and providing for the payment of a per diem compensation to such store-keepers, imposes on the defendants or other distiller any obligation to pay either to store-keepers their said per-diem compensation, or to refund to the plaintiffs said compensation or any sum of money paid by plaintiffs on account thereof, and there was no
21 provision of law when the said writing obligatory was executed

authorizing the insertion in said writing obligatory, or in the conditions thereof, any covenant, agreement, or obligation of these defendants to pay to said store-keepers their said per-diem compensation, or to refund to the plaintiffs the said several sums of money alleged in said declaration to have been paid by plaintiffs to such store-keepers.

Wherefore these defendants pray the judgment of the court here whether they shall be compelled to make any other or further defence to said action of the said plaintiffs.

HORACE H. HARRISON,
Attorney for Defendants Young & Treanor.

On the 19 day of April, 1871, a demurrer was filed by the defendants Peck and Ramage, which is as follows:

22 In the circuit court of the United States for the middle district of Tennessee, April term, 1871.

THE UNITED STATES
vs.
FRANCIS MARION YOUNG ET AL. } Demurrer.

Paschal Paoli Peck & John Ramage, by Horace H. Harrison, their attorney, come and crave oyer of *of* the said writing obligatory and the conditions thereof, which are read to them, in the words and figures following, to wit:

United *internal revenue.—Distiller's bond.*

(This bond must be executed by every distiller before commencing or continuing business under this act, and on the first day of May in each succeeding year.* Act July 20, 1868, sec. 7.)

Know all men by these presents that we, Francis Marion Young and Thomas Ormsby Treanor, as principals, and John Ramage and
23 Paschal Paoli Peck, all of Nashville, Tennessee, as sureties, are held and firmly bound unto the United States of America in the full and just sum of five thousand dollars, money of the United States, to which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 4th day of February, A. D. 1869.

The condition of the foregoing obligation is such that, whereas the said Francis Marion Young and Thomas Ormsby Treanor now or intend on and after the 4th day of February, 1869, to be engaged in the business of a distiller within the fifth collection-district of the State of Tennessee, to wit, at a point on Central Pike, situate 14 miles from Nashville, county of Wilson and State aforesaid:

Now, therefore, if the said Francis Marion Young and Thomas
24 Ormsby Treanor shall in all respects faithfully comply with all the provisions of law in relation to the duties and business of distillers, and shall pay all penalties incurred or fines imposed on him for a violation of any of the said provisions, and shall not suffer the lot or tract of land on which the distillery stands, or any part thereof, or any of the distillery apparatus to be encumbered by mortgage, judgment, or other lien during the time in which he shall carry on said

business, then this obligation shall be void; otherwise it shall remain in full force.

(Signed) FRANCIS MARION YOUNG. [SEAL.]
THOMAS ORMSBY TREANOR. [SEAL.]
JOHN RAMAGE. [SEAL.]
PASCHAL P. PECK. [SEAL.]

Signed, sealed, and delivered in presence of—
JNO. L. ANDERSON.
M. W. DORCHFORD.
JOS. H. NORVELL.

Whereupon the said defendants Peck & Ramage, the sureties in said writing obligatory, say that the said plaintiffs their said action
25 against these defendants ought not to have and maintain, because they say that the said declaration of the said pitiffs, and the matters and things therein as the same are stated and set forth are not sufficient in law, and these defendants demur thereto, and for cause of demurrer set down the following:

1st. The said defendants by the execution and delivery of said writing obligatory and by the condition thereof did not in law become liable and bound to pay to the said persons named in the plaintiffs' said declaration as United States internal-revenue store-keepers the said several sums of money mentioned in said declaration, or any other sum, or to pay and refund to plaintiffs said several sums of money in said declaration demanded by the said plaintiffs in their said declaration alleged to have been paid to said store-keepers, or to pay or refund to plaintiffs that or any other sum paid and advanced by the said plaintiffs
26 to said persons named in said declaration as United States internal store-keepers.

2d. That the alleged breach in the condition of said writing obligatory was in law no breach of the condition or any of the conditions of said bond or writing obligatory, and neither the act of Congress nor any act of Congress providing for the appointment or employment of store-keepers and providing for the payment of a per diem compensation to such store-keepers impose on the defendants or other distillers any obligation to pay either to store-keepers their said per diem compensation or to refund to the plaintiffs said compensation, or any sum of money paid by plaintiffs on account thereof, and there was no provision of law when the said writing obligatory was executed authorizing the insertion in said writing obligatory or in the conditions thereof any covenant, agreement, or obligation of these defendants to pay to
27 said store-keepers their said per diem compensation, or to refund to the plaintiffs the said several sums of money or any sum of money alleged in said declaration to have been paid by the plaintiffs to such storekeepers.

Wherefore these defendants pray the judgment of the court here whether they shall be compelled to make any other or further defense to said action of the said plaintiffs.

HORACE H. HARRISON,
Attorneys for Defendants Peck & Ramage.

On the 25th day of April, 1871, the defendants, Young and Treanor, filed an amended demurrer, which is as follows:

THE UNITED STATES } Amended demurrer.
vs.
FRANCIS MARIAN YOUNG ET ALS. }

Francis Marian Young and Thomas Ormsby Treanor, by leave

28 of the court, file this their amended demurrer and crave oyer of the said writing obligatory and the conditions thereof mentioned in the second count of the declaration of said plaintiffs, which is read to them in the words and figures following, to wit:

Know all men by these presents that we, Francis Marian Young and Thomas Ormsby Treanor, as principals, and Paschal Paoli Peck and John Ramage, all of Nashville, Tennessee, are held and firmly bound unto the United States of America in the full and just sum of five thousand dollars, money of the United States, to which payment, well and truly to be made, we, jointly and severally, bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 1st day of May, A. D. 1869.

The condition of the foregoing obligation is such that, whereas the said Francis Marian Young and Thomas Ormsby Treanor now, or intend after the 1st day of May, 1869, to be engaged in the business of a distiller within the fifth collection-district of the State Tennessee, to

29 wit, at a point on Central Pike situate 14 miles from Nashville, county of Wilson, & State aforesaid:

Now, therefore, if the said Francis Marion Young and Thomas Ormsby Treanor shall in all respects faithfully comply with all the provisions of law in relation to the duties and business of distillers, and shall pay all penalties incurred or fines imposed for a violation of any of the said provisions, and shall not suffer the lot or tract of land on which the distillery or any part thereof, or any part of the distilling apparatus to be encumbered by mortgage, judgment, or other lien, during the time in which he shall carry on said business, then this obligation shall be void; otherwise it shall be in full force.

(Signed) FRANCIS MARIAN YOUNG. [SEAL.]
THOMAS ORMSBY TREANOR. [SEAL.]
PASCAL PAOLI PECK. [SEAL.]
JOHN RAMAGE. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN H. BASKELTE,
F. M. WOODALL.

[Int. rev. stamp. F. M. Young. May 1, 1869.]

Wherefore the said defendants Young and Treanor, the principals in said writing obligatory, say that the said plaintiffs, their said

30 action against these defendants ought not to have and maintain, because they say that the said declaration of the said plaintiff, and the matters and things therein as the same are stated and set forth, are not sufficient in law, and these defendants demur thereto, and for cause of demurrer set down the following:

1st. The said defendants by the execution and delivery of the said writing obligatory and by the conditions thereof, did not in law become liable and bound to pay to the said persons named in the plaintiffs' said declarations as United States internal-revenue store-keepers the said several sums of money mentioned in said declaration or any other sum, or to pay and refund to plaintiff said several sums of money in said second count of said declaration demanded by the said plaintiffs in the second count of their said declaration alleged to have been paid to said store-keepers, or to pay or refund to plaintiffs that or any other sum paid and advanced by the said plaintiffs to said persons named in said declaration as United States internal-revenue store-keepers.

31 2d. That the alleged breach in the condition of said writing obligatory was in law no breach in the condition or any of the conditions of

said bond or writing obligatory, and neither the act of Congress, nor any act of Congress providing for the appointment or employment of store-keepers, and providing for the payment of a per-diem compensation to such store-keepers imposes on the defendants or other distillers any obligation to pay either the store-keepers their said per-diem compensation, or to refund to the plaintiff said compensation, or any other sum of money paid by plaintiff on account thereof. And there was no provision of law when the said writing obligatory was executed authorizing the insertion in said writing obligatory or in the condition thereof any covenant, agreement, or obligation of these defendants to pay said store-keepers their said per-diem compensation or to refund to the plaintiffs the said several sums of money alleged in said declaration to have been paid by plaintiffs to such store-keepers.

Wherefore these defendants pray the judgment of the court here whether they shall be compelled to make any further defense to said action of the said plaintiffs.

H. H. HARRISON,
Atty. for Defts.

On the 25 day of April, 1871, defendants Peck & Ramage filed their amended demurrer, which is as follows:

32 THE UNITED STATES *vs.* FRANCIS MARION YOUNG ET AL. } Amended demurrer.

Paschal Peoli Peck & John Ramage, by leave of court, file this their amended demurrer and crave oyer of the said writing obligatory and the condition thereof mentioned in the second count of the declaration of the said plaintiffs, which is read to them in the words and figures following, to wit:

Know all men by these presents, that we, Francis Marion Young and Thomas Ormsby Treanor, as principals, and Paschal Peoli Peck and John Ramage, all of Nashville, Tennessee, are held and firmly bound unto the United States of America in the full and just sum of five thousand dollars, money of the United States, to which payment well and truly to be made we jointly and severally bind ourselves,
33 our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 1st day of May, A. D. 1869.

The condition of the foregoing obligation is such that whereas the said Francis Marion Young and Thomas Ormsby Treanor now, or intend on and after the first day of May, 1869, to be engaged in the business of a distiller within the fifth collection district of the State of Tennessee, to wit, at a point on Central Pike situate 14 miles from Nashville, county of Wilson, and State aforesaid:

Now, therefore, if the said Francis Marion Young and Thomas Ormsby Treanor shall in all respects faithfully comply with all the provisions of law in relation to the duties and business of distillers, and shall pay all penalties incurred or fines imposed for a violation of any of the said provisions, and shall not suffer
34 the lot or tract of land on which the distillery stands, or any part thereof, or any of the distillery apparatus, to be encumbered by mortgage, judgment, or other lien during the time in which he shall

carry on said business, then this obligation shall be void; otherwise it shall be in full force.

(Signed) FRANCIS MARION YOUNG. [.]
THOMAS ORMSBY TREANOR. [.]
PASCHAL PEOLI PECK. [.]
JOHN RAMAGE. [.]

Signed, sealed, and delivered in presence of—
JNO. H. BASKETTE.
F. M. WOODALL.

Whereupon the said defendants, Ramage & Peck, the sureties in said writing obligatory, say that the said plaintiffs their said action against these defendants ought not to have and maintain, because they say that the said declaration of the said plaintiffs and the matter and things therein, as the same are stated and set forth, are not sufficient in law, and these *the* demur thereto, and for causes of demurrer set down the following:

35 1st. The said defendants, by the execution and delivery of said writing obligatory, and by the condition thereof, did not in law become liable and bound to pay to the said person named in the plaintiff's said declaration as United States internal-revenue store-keeper, the said several sums of money mentioned in said declaration or any other sum, or to pay or refund to plaintiffs said several sums of money in said second count of said declaration demanded by the said plaintiffs in the second count of their said declaration, alleged to have been paid to said store-keeper, so to pay or refund to plaintiffs that or any other sum paid and advanced by the said plaintiffs to said persons named in said declaration as United States internal-revenue store-keepers.

36 2nd. That the alleged breach in the condition of said writing obligatory was in law no breach of the condition or any of the conditions of said bond or writing obligatory, and neither the act of Congress, nor any act of Congress providing for the appointment or employment of store-keepers, and providing for the payment of a per-diem compensation to such store-keepers, imposes on the defendants or other distillers any obligation to pay either to store-keepers their said per-diem compensation or to refund to the plaintiffs said compensation or any sum of money paid by plaintiffs on account thereof, and there was no provision of law when the said writing obligatory was executed authorizing the insertion in said writing obligatory or in the conditions thereof any covenant, agreement, or obligation of these defendants to pay said store-keepers their said per-diem compensation, or to refund to the plaintiff the said several sums of money alleged in said dec-

37 laration to have been paid by plaintiffs to such store-keeper.

Wherefore these defendants pray the judgment of the court here whether they shall be compelled to make any other or further defense to said action of the said plaintiffs.

HORACE H. HARRISON,
Attorney for Defendants Ramage and Peck.

On the 9th day of November, 1871, defendants filed a plea, which is as follows:

THE UNITED STATES }
v. }
F. M. YOUNG ET ALS. }

Defendants, for plea to the second count of plaintiffs' declaration, say

that after executing the obligation therein described, the said Young and Treanor, the principal obligors, did in all respects faithfully comply with all the provisions relating to the duties and business of distillers, and of this they put themselves upon the country.

38 HORACE H. HARRISON,
Attorney for Defendants.

Plaintiffs doth the like.

R. McP. SMITH,
U. S. Atty.

On the 22 day of April, 1871, an order was entered in said case, which is as follows:

THE UNITED STATES
v.
F. M. YOUNG ET ALS.

In this cause leave is granted the defendants to amend their demurrers filed in this cause.

On the 9th day of November, 1871, a judgment was rendered, which is as follows:

THE UNITED STATES
v.
FRANCIS MARION YOUNG, THOMAS ORMSBY Treanor, Paschal Paoli Peck, and John Ramage.

Came the parties by their attorneys, and the demurrer of the
39 defendants to the first count of the plaintiffs' declaration was by the court overruled, and the demurrer of the defendants to the second count of the plaintiffs' declaration was sustained; and thereupon to try the issue upon the said first count of said declaration came a jury of good and lawful men, to wit, Jno. C. Webb, John Overton, John A. Fuson, L. Oatman, Jefferson Murton, Thomas Olsen, R. C. McNairy, Wm. Bossen, B. F. Carter, W. H. P. Turner, James Scott, and A. E. Traine, who, being elected, tried, and sworn well and truly to try the issue joined, upon their oaths do say that they find the issue in favor of the plaintiff, and that the plaintiff has sustained damages by reason of the non-payment of the debt in the declaration mentioned, amounting to the sum of two hundred and ninety-two dollars.

It is therefore considered by the court that the plaintiff recover of the defendants five thousand dollars, the debt in the said first
40 count of the declaration mentioned to be discharged upon the payment of the damages aforesaid by the jury aforesaid assessed, and also the costs of this suit. And thereupon the United States district attorney tendered his bill of exceptions to the court, which was signed and sealed and ordered to be made a part of the record of said cause.

UNITED STATES OF AMERICA,
Middle District of Tennessee, ss:

I, Edward R. Campbell, clerk of the circuit court of the United States for the district aforesaid, do hereby certify that *that* the foregoing is a true and perfect transcript of the record and proceedings in the case of

the United States against Francis Marion Young, Thomas Ormsby Treanor, Paschal Paoli Peck, and John Ramage, lately determined in said circuit court, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed
41 the seal of our said court, at Nashville, this 2d day of November, 1872, and of the Independence of the United States the 97th.

[SEAL.] E. R. CAMPBELL,
Clerk U. S. Circuit Court for Middle District of Tennessee.

(Indorsement on cover:) No. 252. The United States, plaintiffs in error, vs. Francis M. Young, Thomas O. Treanor, Paschal P. Peck, and John Ramage. M. Tennessee C. C. U. S. Filed 8th December, 1874.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

THE UNITED STATES, PLAINTIFFS,
v.
FRANCIS M. YOUNG ET ALS. } No. 252.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

BRIEF FOR THE PLAINTIFFS.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

THE UNITED STATES, PLAINTIFFS,
v.
FRANCIS M. YOUNG ET ALS. } No. 252.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

BRIEF FOR THE PLAINTIFFS.

STATEMENT.

The plaintiffs brought this suit May 24, 1870, upon two bonds given by the defendants to secure the due performance by Young & Treanor, as distillers, of their duty under the internal-revenue laws. The first bond, declared upon in the first count, was executed February 4, 1869; the second, of like tenor, was executed May 1, 1869, and is declared on in the second count. (Record, 3, 5, 7.) The breach of each upon which the Government relied was the non-payment of the wages of the store-keepers. The case of United States *v.* Singer, (15 Wall., 111,) having determined that the store-keepers' fees prior to the act of March 3, 1869, c. 121, as corrected by public resolution No. 5, approved March 29, 1869, (16 Stats., 52,) could not be recovered by suit on

the distillers' bond, no claim was set up for those paid on account of Young & Treanor's distillery prior to April 1, 1869. The store-keepers' fees for 30 days and 26 nights in the month of April are claimed in the first count and under the bond of February 4, 1869. (Record, 3.)

The same parties, principal and sureties, gave a new bond, May 1, 1869, with the same statutory condition as the former bond. Under this instrument, in the second count, the plaintiffs claim store-keepers' fees from May 1 to September 1, 1869. (*Id.*, 6.)

To this declaration the defendants demurred, assigning as cause that they were not liable to pay the store-keepers, and therefore that the breaches of bond alleged were in law no breach of condition, and that no such stipulation was contained in these writings, and that the insertion of such conditions was not authorized by law. (Record, 6, 8–11.)

The demurrer was sustained as to the second count and overruled as to the first count, upon which a verdict of $292 was obtained. To the ruling sustaining the demurrer to the second count the plaintiffs excepted. (Record, 12; folios 39, 40.)

Thereupon judgment was rendered in our favor upon the verdict and against us on said second count. (*Ib.*)

ASSIGNMENT OF ERRORS.

The United States assign for error the action of said circuit court in sustaining the defendants' demurrer to said second count and in entering judgment upon said count in favor of the defendants. (Record 1, folio 3; and 12, folio 40.)

BRIEF.

The act of July 20, 1868, c. 186, § 7 (15 Stats., 127) required every distiller "on filing his notice of his intention to continue or commence business with the assessor, before proceeding with such business, after the passage of this act, *and on the first day of May of each succeeding*

year, make and execute a bond, in form prescribed by the Commissioner of Internal Revenue, with at least two sureties, to be approved by the assessor of the district; * * * but in no case shall the penal sum of said bond be for a less sum than $5,000. The condition of the bond shall be that the principal shall faithfully comply with all the provisions of law in relation to the duties and business of distillers," &c. * * * "A new bond may be required in case of the death, insolvency, or removal of either of the sureties, and *in any other contingency* at the discretion of the assessor or Commissioner of Internal Revenue."

Section 15 of the same act requires the distiller to establish a warehouse at his own expense, to be used only for the storage of distilled spirits of his own manufacture; which, when approved, is declared to be a bonded warehouse of the United States, to be known as a distillery-warehouse, and shall be under the direction and control of the collector of the district, and *in charge of an internal-revenue store-keeper*, assigned thereto by the Commissioner of Internal Revenue." (*Id.*, 130, 131.) Section 52 says, "Every store-keeper shall have charge of the warehouse to which he may be assigned," &c. (*Id.*, 146.)

Subsequently to the execution and delivery of the *first* of the two bonds in suit, (to wit, that of February 4th, 1869,) *but prior to the rendition of the services for which the payment was made of which re-imbursement is now sought, and prior to the date, execution, and delivery of bond of May* 1, 1869, declared upon in the *second* count, Congress passed a joint resolution, approved March 29, 1869, that "after the passage of this act the proprietors of all internal-revenue bonded warehouses shall re-imburse the United States the expenses and salary of all *store-keepers* or other officers in charge of such warehouse." (16 Stats., 52.) The resolution recites that this provision was accidentally omitted in the enrollment of the act of March 3, 1869, which is the act referred to in the clause quoted.

The case of United States *v.* Powell, 14 Wallace, 493,

determines that the act affects the obligation of pre-existing bonds. That it could not have such an effect was evidently the opinion of the judge of the court below, as is apparent from his ruling upon a similar issue in the next case (No. 253) brought up by exceptions.

United States *v.* Singer (15 Wallace, 111, 121) affirms United States *v.* Powell as to expenses paid or bonds (with the ordinary statutory conditions) given *after* March 29, 1869, but holds that re-imbursement cannot be had of wages paid *before* the passage of the above-cited resolution. No such re-imbursement is claimed in either count of our declaration. Citations are unnecessary to sustain the position taken by the court in Powell's case, that the condition of compliance "with all the provisions of law in relation to the duties and business of distillers" is prospective as well as present, and embraces all such legal provisions in force during the term of the bond, whether enacted before or after its execution and delivery. The references there made are precisely in point, and the doctrine sufficiently well sustained upon reason and principle to stand independent of other authority. (King *v.* Nichols, 16 Ohio, 83; Farr *v.* Hollis, 9 Barn. & Cres., 332; Bartlette *v.* Governor, 2 Bibb, 586.)

But in this case, as the record states it, this question does not arise; for as to the payments made under the *first* bond of February 4, 1869, the demurrer was overruled and a verdict obtained, no exception having been taken or writ of error sued out by the defendants. It was only as to that of May 1, 1869, mentioned in the *second* count of the declaration, that the demurrer was sustained; and all the duties performed and payments made, claimed in *this* count, they occurred under an instrument given after the statute had expressly imposed this obligation of re-imbursement upon distillers.

The judgment is evidently erroneous for both reasons above indicated, and must be reversed.

EDWIN B. SMITH,
Assistant Attorney-General.